

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 Daniel Victor Hancock,

5 Plaintiff

6 v.

7 Jimmy Lovrien, et al.,

8 Defendants

Case No. 2:24-cv-00369-CDS-NJK

**Order Granting Defendants'
Motion to Dismiss**

[ECF No. 17]

9
10 Plaintiff Daniel Hancock brings this lawsuit alleging nine causes of action against
11 defendants Jimmy Lovrien, John Ramos, and the Duluth News Tribune, related to published
12 newspaper articles. *See generally*, Am. Compl., ECF No. 7. Hancock asserts that the articles
13 included false statements which damaged his reputation, caused emotional distress, and
14 resulted in financial harm. *Id.* at 3. Defendants Duluth News Tribune and Jimmy Lovrien move to
15 dismiss the complaint for lack of personal jurisdiction. *See generally* ECF No. 17. Hancock's
16 opposition to the motion to dismiss was due on or before July 5, 2024.¹ As of the date of this
17 order, no opposition has been filed. For the reasons set forth herein, defendants' motion to
18 dismiss is granted.

19 **I. Legal Standard**

20 Unlike a motion for summary judgment, a district court is not required to examine the
21 merits of an unopposed motion to dismiss before granting it. *Ghazali v. Moran*, 46 F.3d 52, 54 (9th
22 Cir. 1995) (the Ninth Circuit refused to extend to motions to dismiss the requirement that a
23 district court examine the merits of an unopposed motion for summary judgment before
24 summarily granting it pursuant to a local rule). Thus, a district court may properly grant an

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26 ¹ *See* ECF No. 17; *see also* Local Rule 7-2(b) (stating that the deadline to file and serve any points and
authorities in response to the motion—other than summary judgment—is 14 days after service of the
motion). That 14-day period is extended to the next business day if the filing deadline falls on a legal
holiday. Fed. R. Civ. P. 6(a)(1)(C).

1 unopposed motion to dismiss under a local rule. *Id.* at 53. Local Rule 7-2(d) provides that the
2 failure of an opposing party to file points and authorities constitutes that party's consent to the
3 granting of the motion. LR 7-2(d).

4 Before granting an unopposed motion to dismiss, the court must weigh the following
5 factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to
6 manage its docket; (3) the risk of prejudice to the defendant; (4) the public policy favoring
7 disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Ghazali*, 46
8 F.3d at 53 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)).

9 II. Discussion

10 The first two factors, the public's interest in expeditiously resolving this litigation and
11 the court's interest in managing its docket, weigh in favor of dismissing Hancock's claims
12 against Lovrien and Duluth News Tribune. Hancock has failed to respond to the motion to
13 dismiss, even though more than 14 days have passed since the July 5, 2024 deadline. Hancock's
14 non-compliance slows the expeditious resolution of this litigation by delaying the set briefing
15 schedule and interferes with the court's ability to manage its docket. *T.G. v. Bd. of Trustees*, 2022
16 U.S. Dist. LEXIS 133058, *5 (D. Mont. July 6, 2022) ("The Court cannot manage its docket if
17 Plaintiffs do not respond to motions. . . [t]his case [] cannot proceed if Plaintiffs fail to
18 participate."); *see also Yourish*, 191 F.3d 983, 990 (9th Cir. 1999) ("[D]ismissal . . . serves the public
19 interest in expeditious resolution of litigation as well as the court's need to manage its docket
20 because Plaintiffs' noncompliance has caused the action to come to a complete halt, thereby
21 allowing Plaintiffs to control the pace of the docket rather than the court.") (quoting *Ash v.*
22 *Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984)).

23 The third factor also weighs in favor of dismissing Hancock's claims against Lovrien and
24 Duluth News Tribune. There is no apparent risk of prejudice to defendants by dismissing the
25 action at this time; indeed, defendants filed the instant motion to dismiss.
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1 The fourth factor weighs against dismissing Hancock’s claims against Lovrien and
2 Duluth News Tribune. That is because public policy favors disposing of cases on their merits.
3 *See Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (“[T]he public policy favoring
4 resolution on the merits clearly counsels against dismissal.”) (citation omitted); *Pagtalunan v.*
5 *Galaza*, 291 F.3d 639, 643 (9th Cir. 2002) (“Public policy favors disposition of cases on the
6 merits. Thus, this factor weighs against dismissal.”). However, this factor is not weighty here;
7 the Ninth Circuit has “recognized that this factor ‘lends little support’ to a party whose
8 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
9 progress in that direction.” *In re: Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1228
10 (9th Cir. 2006) (quoting *In re Exxon Valdez*, 102 F.3d 429, 433 (9th Cir. 1996)). Here, Hancock did
11 not file a response opposing the motion, making resolution on the merits difficult, if not
12 impossible. *Cf. Johnson v. Top Inv. Prop. LLC*, 2018 U.S. Dist. LEXIS 140051, at *17–18 (E.D. Cal. Aug.
13 17, 2018) (“Although public policy generally favors the resolution of a case on its merits, as here,
14 a defendant’s failure to appear and defend against a plaintiff’s claims makes a decision on the
15 merits impossible.”) (citation omitted). And “a case that is stalled or unreasonably delayed by a
16 party’s failure to comply with deadlines . . . cannot move forward toward resolution on the
17 merits.” *In re PPA*, 460 F.3d at 1228.

18 Last, with respect to whether less drastic measures have been considered, the court has
19 determined that dismissal without prejudice is proper here. *See Ash*, 739 F.2d at 496 (dismissal
20 without prejudice is considered a lesser sanction and therefore is a “more easily justified
21 sanction for failure to prosecute”); *see also Childers v. Arpaio*, 2009 WL 3756487 at *2 (D. Ariz.,
22 Nov. 5, 2009) (dismissal without prejudice imposed as a “less drastic sanction” compared to
23 dismissal with prejudice). By dismissing the claims against without prejudice, Hancock remains
24 free to continue to pursue his claims, if necessary and appropriate, in a subsequent proceeding.
25 Accordingly, because the fifth factor also weighs in favor of dismissal, I grant against Lovrien
26 and Duluth News Tribune’s unopposed motion to dismiss.

1 **III. Conclusion**

2 IT IS THEREFORE ORDERED that defendants Jimmy Lovrien and Duluth News
3 Tribune's motion to dismiss [ECF No. 17] is GRANTED. The Clerk of Court is kindly
4 instructed to enter judgment accordingly.

5 Dated: July 23, 2024

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Cristina D. Silva
United States District Judge